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6.27.18

VIA ECF

Chief Mag. Judge Roanne L. Mann
United States District Court, EDNY
225 Cadman Plaza East
Brooklyn, New York 11201

RE: Bonikos et al v. Foodoni NY 23 Corp. et al, Case 1:17-cv-02162-AMD-RLM

Your Honor,

I represent Plaintiffs in the above action. My Partner, Douglas Varacalli, filed a letter to the Court requesting an enlargement of time to file the JPTO, due to Defendant's failure to complete their portion of the JPTO. This Court issued an Order on June 22, 2018, granting Plaintiffs request for an enlargement of time and ordering Defendant, Foodoni, to serve its portion of the JPTO on the Plaintiffs by June 25, 2018. In that Order your Honor stated that "Foodoni is directed to cure that omission, by June 25, 2018, on pain of sanctions (including an order precluding Foodoni from proffering witnesses and exhibits at Trial." Plaintiffs write today to alert the Court to the fact that Foodoni did not comply with the Court's order and Plaintiffs request that the Court issue the sanctions mentioned in its June 22, 2018 Order.

Plaintiffs improperly filed this motion as a letter yesterday and your Honor issued an Electronic Order stating that the Court will not act on any request for judicial action that has not been docketed into ECF as a motion. The June 26, 2018 Electronic order further suggested that Plaintiff should first attempt to consult with counsel for Defendant Foodoni about resolving the issue raised by Plaintiffs. As per your Honor's Electronic Order, entered on 06/26/2018, Plaintiffs emailed Defendant's attorney in a reply email, stating among other things:

"I would suggest that you start working with us in good faith on the JPTO. When can we expect the witness and exhibit schedule? Furthermore, a response to my email in regards to the joint stipulations of facts sent on June 20, 2018, would be appreciated."

That email was sent at 12:03pm on June 26, 2018. Defendant's attorneys have not responded to that portion of the email or to the email from June 20, 2018, that was mentioned. At 1:30pm on June 27, 2018, Defendant has still not served Plaintiffs with its completed portion of its JPTO. The JPTO is currently due on June 29, 2018, leaving us with less than 2 days to complete and file the JPTO, while Defendant has been unresponsive and seemingly unwilling to undertake in a written conversation about the JPTO.

On June 21, 2018, Plaintiffs filed a letter with the Court requesting an enlargement of time to file the JPTO. In their letter the Plaintiffs highlighted the fact that Defendant has not served Plaintiffs with their completed portion of the JPTO. Defendant, at that time, and even up to today, did not serve Plaintiffs with its witness schedule or exhibit schedule. Furthermore, we stated that Defendants has not engaged us in good faith conversations with respect to the Joint stipulations of Fact.

On June 22, 2018, this Court issued the following Order:

“ELECTRONIC ORDER granting [38](#) Motion for Extension of Time to File. Defendant Foodoni is admonished for flouting the Court's Order of June 11, 2018, pursuant to which Foodoni was required to serve its portion of the Joint Pretrial Order on plaintiff by June 15, 2018. Foodoni is directed to cure that omission, by June 25, 2018, on pain of sanctions (including an order precluding Foodoni from proffering witnesses and exhibits at trial). The combined JPTO is now due by June 29, 2018. Ordered by Chief Mag. Judge Roanne L. Mann on 6/22/2018. (Proujansky, Josh) (Entered: 06/22/2018).”

Later in the day on June 22, 2018, Defendant filed a motion for reconsideration. In response to Defendant's motion for reconsideration, this Court issued an Order on June 22, 2018, denying their motion without prejudice, and stating “absent further order of the Court, the 6/22/18 Electronic Order remains unchanged.” Plaintiffs understood from the second Order issued on 6/22/18, that the schedule set by the Court in its first Order on 6/22/18, remains unchanged.

Plaintiffs write to the Court to state that Defendant, Foodoni, did not serve Plaintiffs with its completed portion of the JPTO. Plaintiffs have not received an exhibit or a witness schedule from the Defendant. From June 20, 2018, until today, Defendant has failed to reach out to Plaintiffs to discuss any portion of the JPTO. Defendant did not respond to Plaintiffs question in an email sent on June 26, 2018 at 12pm, requesting a date as to when Plaintiffs can expect to receive a witness and exhibit List from Defendant. Furthermore, Defendant has failed, and continues failing, to work in good faith with the Plaintiffs on the stipulated facts section of the JPTO. Therefore, Defendant did not abide by this Court's June 22, 2018, Order.

I respectfully request that Your Honor issue the sanctions, warned off, pursuant to the June 22, 2018 Order.

Truly Yours

VARACALLI & HAMRA, LLP

/s/ Ibrahim Abohamra

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